

1 AN ACT concerning criminal law.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by  
5 changing Section 33-5 as follows:

6 (720 ILCS 5/33-5)

7 Sec. 33-5. Preservation of evidence Chain-of-custody.

8 (a) It is unlawful for a law enforcement agency or an  
9 agent acting on behalf of the law enforcement agency State's  
10 Attorney, an Assistant State's Attorney, or other employee of  
11 the Office of the State's Attorney or for a peace officer or  
12 other employee of a law enforcement agency to intentionally  
13 fail to comply with the provisions of subsection (a) of  
14 Section 116-4 of the Code of Criminal Procedure of 1963.

15 (b) Sentence. A person who violates this Section is  
16 guilty of a Class 4 felony.

17 (c) For purposes of this Section, "law enforcement  
18 agency" has the meaning ascribed to it in subsection (e) of  
19 Section 116-4 ~~clause (a)(4) of Section 107-4~~ of the Code of  
20 Criminal Procedure of 1963.

21 (Source: P.A. 91-871, eff. 1-1-01.)

22 Section 10. The Code of Criminal Procedure of 1963 is  
23 amended by changing Section 116-4 as follows:

24 (725 ILCS 5/116-4)

25 Sec. 116-4. Preservation of evidence for forensic testing  
26 Chain-of-custody.

27 (a) Before or after the trial in a prosecution for a  
28 violation of Section 12-13, 12-14, 12-14.1, 12-15, or 12-16  
29 of the Criminal Code of 1961 or in a prosecution for an

1 offense defined in Article 9 of that Code, or in a  
 2 prosecution for an attempt in violation of Section 8-4 of  
 3 that Code of any of the above-enumerated offenses, unless  
 4 otherwise provided herein under subsection (b) or (c), a law  
 5 enforcement agency or an agent acting on behalf of the law  
 6 enforcement agency the-law-enforcement-agency-and-the-State's  
 7 Attorney's-Office shall preserve, subject to a continuous  
 8 chain of custody, any physical evidence in their possession  
 9 or control that is reasonably likely to contain forensic  
 10 evidence, including, but not limited to, fingerprints or  
 11 biological material secured in relation to a trial and with  
 12 sufficient official documentation to locate that evidence.

13 (b) After a ~~trial-resulting-in-a~~ judgment of conviction  
 14 is entered, the evidence shall either be impounded with the  
 15 Clerk of the Circuit Court or shall be securely retained by a  
 16 law enforcement agency. Retention shall be permanent in cases  
 17 where a sentence of death is imposed. Retention shall be  
 18 until the completion of the sentence, including the period  
 19 of mandatory supervised release for the offense, or January  
 20 1, 2006, whichever is later, for any conviction for an  
 21 offense or an attempt of an offense defined in Article 9 of  
 22 the Criminal Code of 1961 or in Section 12-13, 12-14,  
 23 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or for:

24 (1) ~~Permanent~~ following any conviction for an  
 25 offense defined in Article 9 of the Criminal Code of  
 26 1961.

27 (2) ~~For 25 years~~ following any conviction for a  
 28 violation of Section 12-13, 12-14, 12-14.1, 12-15, or  
 29 12-16 of the Criminal Code of 1961.

30 (3) ~~For~~ 7 years following any conviction for any  
 31 other felony for which the defendant's genetic profile  
 32 may be taken by a law enforcement agency and submitted  
 33 for comparison in a forensic DNA database for unsolved  
 34 offenses.

1 (c) After a judgment of conviction is entered, the  
2 State's-Attorney-or law enforcement agency required to retain  
3 having-custody-of evidence described in subsection (a) may  
4 petition the court with notice to the defendant or, in cases  
5 where the defendant has died, his estate, his attorney of  
6 record, or an attorney appointed for that purpose by the  
7 court for entry of an order allowing it to dispose of  
8 evidence if, after a hearing, the court determines by a  
9 preponderance of the evidence that:

10 (1) it has no significant value for forensic  
11 science analysis and should ~~must~~ be returned to its  
12 rightful owner, destroyed, used for training purposes, or  
13 as otherwise provided by law; or

14 (2) it has no significant value for forensic  
15 science analysis and is of a size, bulk, or physical  
16 character not usually retained by the law enforcement  
17 agency and cannot practicably be retained by the law  
18 enforcement agency; or-

19 (3) there no longer exists a reasonable basis to  
20 require the preservation of the evidence because of the  
21 death of the defendant; however, this paragraph (3) does  
22 not apply if a sentence of death was imposed.

23 (d) The court may order the disposition of the evidence  
24 if the defendant is allowed the opportunity to take  
25 reasonable measures to remove or preserve portions of the  
26 evidence in question for future testing.

27 (d-5) Any order allowing the disposition of evidence  
28 pursuant to subsection (c) or (d) shall be a final and  
29 appealable order. No evidence shall be disposed of until 30  
30 days after the order is entered, and if a notice of appeal is  
31 filed, no evidence shall be disposed of until the mandate has  
32 been received by the circuit court from the appellate court.

33 (d-10) All records documenting the possession, control,  
34 storage, and destruction of evidence and all police reports,

1 evidence control or inventory records, and other reports  
 2 cited in this Section, including computer records, must be  
 3 retained for as long as the evidence exists and may not be  
 4 disposed of without the approval of the Local Records  
 5 Commission.

6 (e) In ~~for~~--purposes--of this Section, "law enforcement  
 7 agency" includes any of the following or an agent acting on  
 8 behalf of any of the following: a municipal police  
 9 department, county sheriff's office, any prosecuting  
 10 authority, the Department of State Police, or any other  
 11 State, university, county, federal, or municipal police unit  
 12 or police force.

13 "Biological material" includes, but is not limited to,  
 14 any blood, hair, saliva, or semen from which genetic marker  
 15 groupings may be obtained. ~~has the meaning ascribed to it in~~  
 16 elause-(a)(4)-of-Section-107-4-of-this-Code.

17 (Source: P.A. 91-871, eff. 1-1-01.)

18 Section 99. Effective date. This Act takes effect upon  
 19 becoming law.